UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE: **Johanna Ingrao,** **Debtor.**	**Chapter 13** **Case No.: 15-74410-ast**
Johanna Ingrao, **Plaintiff,** **-Against-** **Williams & Fudge, Inc.,** **Defendant.**	**ADV. PRO.:** **COMPLAINT**

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Plaintiff, Johanna Ingrao, (hereinafter referred to as "Debtor") herein by her attorney, The Law Office of Darren Aronow, PC, as and for her complaint against the Defendant to complaint against the Defendant to determine the dischargeability of an alleged debt which Defendant purports to be an "educational loan", respectfully states as follows:

NATURE OF THE ACTION

1. This is an adversarial proceeding brought on behalf of the Debtor who seeks a declaration that the credit towards tuition made to her by defendant does not constitute "funds received for an educational benefit" under Bankruptcy Code §523 (a) (8) and therefore, such credit towards tuition should not be excepted from discharge pursuant to §523 of the Bankruptcy Code.

PARTIES

2. The Plaintiff, Johanna Ingrao, is a debtor under Chapter 7 of Title 11 of the U.S.C. in bankruptcy court under case 8-15-74410-ast, which is currently pending before this court.

3. The Defendant, Williams & Fudge, Inc. (hereinafter referred to as "W & F" or "Defendant") is a corporation organized under South Carolina State law. According to the New York State Department of State, W & F may be served through its registered agent, C T Corporation System111 Eighth Avenue, New York, New York, 10011 and their physical address is 300 Chatham Ave Rock Hill, South Carolina, 29730.
4. The principal purpose of W & F is the collection of debts in this county and state and Defendant regularly attempts to collect debts alleged to be due another. Defendant is a "debt collector" as that term is defined by 15 U.S.C. §1692a (6).

Jurisdiction and Venue

5. This Honorable Court has jurisdiction of this adversarial proceeding pursuant to U.S.C. §§157; 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1409 and 1927. The statutory predicate for this proceeding is 11 U.S.C. § 502 of the Bankruptcy Code and Rules 3001, 3007, 3012, 6009 and 7001 et seq. of the Federal Rules of Bankruptcy Procedure. This action is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(I).

FACTS

6. The Debtor attended Long Island University, C.W. Post Campus, (hereinafter "Post") a private, **for-profit** University from approximately 2010 to 2013.

7. During her time at the private, for-profit University, Debtor received a financial aid package consisting of private student loans, federal student loans and a credit for tuition, which the for-profit University granted to Debtor which is the subject of this Adversarial Proceeding.

8. Debtor is currently repaying both her federal student loans and her private student loans.

9. However, Debtor has never made any payment towards the credit for tuition that Debtor received from Post, given that she never signed **any** paperwork which would indicate that repayment of the credit towards tuition was not expected to be repaid.

10. Further, **no funds** were ever received by Debtor from Post for the tuition credit, but rather her tuition bill for the last semester was reduced by the amount of the credit towards tuition that was granted to Debtor by Post.

11. The debt was allegedly and upon information and belief, purchased by W & F at some point, but the Debtor was never given notice of the same.

12. The Debtor commenced a Chapter 7 bankruptcy on October 14, 2015.

13. W & F was listed as a creditor on the bankruptcy petition despite the Debtor, upon information and belief, never having received any letters from the debt collector attempting to collect the debt despite W & F reporting a debt of twenty two thousand three hundred eight ($22,308.00) dollars and no cents which appears on Debtor's credit profile.

14. While it is true that types of student debt transactions are excepted from discharge pursuant to 11 U.S.C. §523(a)(8) (as amended 2005) has become more expansive, in certain limited circumstances such student debt must be discharged as is clearly the case here.

15. It would appear that the question of whether an alleged debt garnered as a result of educational expenses is dischargeable in bankruptcy is novel in the Second Circuit, especially post BAPCPA, a landmark pre-BAPCPA case, In Re: Kevin Renshaw, Debtor, Cazenovia College v. Kevin Renshaw, In Re: David W. Regner, Debtor, 222 F.3d 82 (2000), despite amendments which were made in 1998 and in 2005, is still controlling in the instant matter.

16. The Renshaw Court was faced with two cases which turned on the same two questions:

    1) Whether the debts in question were loans, the only form of educational debt excepted as the time of Renshaw's suit, which is not as relevant in the instant matter insomuch as the 1998 amendment which expanded the definition of excepted debt to include other forms of debt aside from loans and;

    2) Whether there was an expectation of repayment.

17. With respect to the first question faced by the Renshaw Court, it is unnecessary to analyze whether the Debtor's alleged student debt was a loan since 11 U.S.C §523 (a) (8) (A) (ii) applies to educational benefits, scholarships and stipends.

18. However, despite the fact that there has been an extension of the types of educational transactions that may be excepted under the rubric of educational benefits, stipends and scholarships, strict statutory construction of 11 U.S.C §523 (a) (8) (A) (ii) requires that any educational benefit, scholarship or stipend which is sought to be excepted from discharge be **for funds received** to wit:

(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—
(A) (ii) an **obligation** to repay **funds received** as an educational benefit, scholarship, or stipend; or (*Emphasis Added).*

19. While there do not appear to be any decisions within the Second Circuit interpreting the meaning of 11 U.S.C §523 (a) (8) (A) (ii) in particular, a plethora of the cases which have been decided throughout the country interpreting the meaning of 11 U.S.C §523 (a) (8) (A) (ii) held that the Debtor actually had to actually receive funds in order for 11 U.S.C §523 (a) (8) (A) (ii) except the student debt from discharge.

20. In the instant action, no funds were ever received by the Debtor.

21. Additionally, and perhaps more novel, even in the limited number of cases where Courts found that a student debt should be excepted pursuant to 11 U.S.C §523 (a) (8) (A) (ii) despite no actual funds having been received, in each and every case there was an expectation of repayment because of the language contained in the obligation that the debtor signed at the time of the educational benefit having been conferred.

22. In the instant matter, the original “creditor”, Post, did not have any written agreement with the Debtor demonstrating terms of repayment or even that there was an expectation that the educational benefit ever be repaid, and thus Debtor never agreed to any **obligation** to repay.

23. Moreover, since Defendant, a **for-profit debt collector** it is not a governmental unit or a nonprofit institution, and is in fact not even the original “creditor”, the Debtor’s alleged debt purportedly “owned” by Defendant (although it is unclear how Defendant

can own a debt when there is no evidence of any writing giving Defendant standing to claim that it is owed such "debt"), Defendant's claim cannot be deemed excepted from discharge pursuant to §523 (a) (8) (A) (i) which necessarily requires that the "creditor" seeking to have a student loan excepted from Bankruptcy Discharge pursuant to §523 (a) (8) (A) (i) be either a government unit or a nonprofit institution and that the debt sought to be excepted be **a loan, which the instant debt is not**.

24. In the absence of a loan, and as the Defendant is neither a governmental unit nor a nonprofit institution, Defendant may not except the alleged debt from discharge pursuant to §523 (a) (8) (A) (i); and since Debtor's debt is not a loan which is a necessary component for the "debt" to be excepted pursuant to §523 (a) (8) (B), the Defendant cannot meet any of the criteria to except the Debtor's debt to W & F from discharge.

25. The legislative history of subsection 523(a)(8) indicates that Congress sought to quell an individual who graduated from college owing one or more educational loans the ability to then discharged them through a bankruptcy proceeding without making a good faith effort to repay those loans even though they had received a significant benefit. See Report of the Commission on the Bankruptcy Laws of the United States, H.R.Doc. No. 93-137, 93rd Cong., 1st Sess., Pt. 1, 176-77. In re Avila, 53 B.R. 933 (Bankr W.D. N.Y. 1985).

26. Debtor is dutifully repaying both a private and a federal student loan and the debt which Debtor is seeking to discharge does not qualify to be excepted under any section of 11 U.S.C §523 (a) (8).

27. Thus, in the instant matter what Debtor is seeking to discharge is in keeping with the very purpose of the Bankruptcy Code, to "relieve the honest Debtor from the weight of oppressive indebtedness and permit him (or in this case her) to start afresh".

FIRST CLAIM

DECLARATION THAT THE LOANS CANNOT BE EXCEPTED FROM DISCHARGE IN BANKRUPTCY PURSUANT TO §523 (A) (8) AS THE BENEFIT WHICH WAS CONFERRED DOES NOT FALL UNDER ANY OF THE APPLICABLE EXCEPTIONS TO DISCHARGE

28. Plaintiff repeats and re-alleges the preceding paragraphs 1 through 27 as though more fully set forth herein.

29. The Defendant is a **for-profit debt collector** engaged in the practice of collecting educational debt amongst other types of debt on the secondary market.

30. The educational debt that the Defendant claims it is owed is not an obligation on the part of the Debtor as the Debtor never signed any paperwork demonstrating that there was ever any expectation that the educational benefit that was conferred was expected to be repaid.

31. Further, Defendant does not even have standing to claim that it is owed a debt as there was never a written contract which sets forth the obligation to repay, nor is there any writing which Defendant can offer as proof that it even owns a debt from Debtor.

32. Finally, because neither the original creditor, Post, nor the Defendant W & F actually gave Debtor any funds which were received by her; nor is there anything in writing

which Debtor signed creating an obligation to repay the educational benefit that Post conferred to Debtor; nor are either the Defendant or the original credit for that matter, a governmental unit or a nonprofit institution; nor was the educational benefit conferred to the Debtor a loan, the alleged debt which Debtor is seeking to discharge does not qualify to be excepted as an excepted Educational Debt pursuant to Section 523 (a) (8) (A) (i), 523 (a) (8) (A) (ii) or 523 (a) (8) (B) of the Bankruptcy Code, and therefore the benefit must be discharged.

33. As such, the “education benefit” which defendant seeks to except should be discharged in Bankruptcy as 11 U.S.C. §523(a) (8) is not applicable to the case at bar as a matter of law and discharge must be granted.

WHEREFORE, Debtor prays that this Court enter a judgment in favor of the Debtor and against the defendant for the following relief:

(a) Issue an Order Discharging the defendant’s loans pursuant to 11 U.S.C. §523(a)(8), and

(b) For such other relief as this Court shall deem just, proper and equitable.

Dated: January 5, 2016
Hicksville, New York

/s/ Darren Aronow____________________
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